IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Nijam Khan & Anr. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 1005/2006 against the order dated 21-10-2003 passed by the Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Merta, in Criminal Revision No. 11/2001.

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Date of Order: November 29, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Vishvajeet Joshi, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 21.10.2003 passed by the Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Merta (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 11/2001, whereby the revision petition filed by the non-petitioner No.2 Hajra alias Baby against the order dated 5-12-2000 passed by the Judicial Magistrate, Merta (for short, "the trial Court" hereinafter) was allowed and the matter was remanded to the trial Court to consider as to whether the case for condonation of the period of

limitation under Section 473 of the Code is made out or not, and if the case for condonation of period of limitation is made out then after affording opportunity of hearing to the persons against whom the cognizance of the offence is to be taken, keeping in view the decision of the Hon'ble Supreme Court in State of Maharashtra Vs. Sharadchandra Vinayak Dongre & ors., AIR 1995 SC 231. That order has been challenged by the petitioners before this Court by the instant criminal miscellaneous petition.

I have heard learned counsel for the petitioners and the Public Prosecutor for the State.

The facts and circumstances giving rise to the instant case are that complainant/non-petitioner No.2 lodged a report on 7-1-1995 with Police Station, Merta City, being FIR No. 2/1995 for the offences under Sections 498-A, 406 and 323 IPC. After investigation, the police did not find the case and filed a final report; upon which the complainant/non-petitioner No.2 filed a protest petition. On the protest petition, the non-petitioner No.2 got examined herself and her witnesses under Sections 200 and 202 of the Code. The trial Court, on examination of the material, including the statements under Sections 200 and 202 of the Code, took cognizance of the offences vide order dated 4-11-1996, against which a revision petition was filed by the petitioners before the Revisional Court and the Revisional Court did not interfere with the order of the

trial Court. That order of the Revisional Court came to be challenged by the petitioners by filing S.B. Criminal Miscellaneous Petition No, 53/1998 before this Court. By the order dated 29-2-1998, the criminal miscellaneous petition filed by the petitioners was allowed and the order of the trial Court dated 4-11-1996 and consequently the order of the Revisional Court dated 4.9.1997 were set aside the the matter was remitted to the trial Court with a direction that before passing any final order either under Section 203 or 204 of the Code, the investigation record as also the evidence recorded under Section 200 and 202 of the Code shall be considered on merit and on consideration thereof, appropriate judicial order be passed against the persons who are responsible for the offences. On the matter being remitted to the trial Court, the trial Court passed the order taking cognizance dated 5-12-2000. That order came to be challenged before the Revisional Court. The Revisional Court, while dismissing the revision petition filed by non-petitioner No.2 Hajra alias Baby against the petitioners, allowed the revision petition filed by the present petitioners, set aside the order of the trial Court dated 5-12-2000 and remanded the matter to the trial Court with the direction that if the case is made out under Section 473 of the Code for condonation of delay in launching the prosecution and if the Court feels that there is ground to condone the delay in taking cognizance of the

offence then after hearing the persons against whom the cognizance is sought to be taken, pass an appropriate order.

Learned counsel for the petitioners submits that there has been inordinate delay in the proceedings and the order dated 5-12-2000 taking cognizance was beyond the period of limitation. Be that as it may, as the order of the trial Court dated 5-12-2000 has been set aside by the Revisional Court and the matter has been remanded to the trial Court to hear on the point of condonation of delay after affording opportunity of hearing to the petitioners, therefore, it cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of the Court warranting interference in inherent jurisdiction. It is open for the petitioners to oppose the condonation of delay before the trial Court.

The criminal miscellaneous petition is, therefore, dismissed. The stay petition also stands dismissed.

(H.R. PANWAR), J.

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